

ARTICLE 11

GRAFFITI PREVENTION AND ABATEMENT

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ARTICLE 11

GRAFFITI PREVENTION AND ABATEMENT

SEC. 3-11.00 TITLE. This article shall be known as the 'Graffiti Prevention and Abatement Ordinance.'

SEC. 3-11.01 PURPOSE AND INTENT. The City Council hereby finds and declares that:

- a. Graffiti is detrimental to the health, safety, and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities, and the enjoyment of life; is inconsistent with the City's community preservation goals and aesthetic standards; and results in additional graffiti and in other properties becoming targets of graffiti unless it is quickly removed from public and private property.
- b. Graffiti results in visual pollution and is hereby deemed a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.
- c. It is the purpose of this article to establish procedures and adopt regulations whereby all public and private property within the City may be maintained free of graffiti.

SEC. 3-11.02 DEFINITIONS. For purposes of this article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

- a. 'Graffiti' means any unauthorized inscription of a word, symbol, or design which is marked, etched, scratched, drawn, or painted on any structural component of any public or private building, structure, facility, property, vehicle, or other item.
- b. 'Abate' shall mean the removal or covering over of graffiti by such means and in such manner and to such an extent as is necessary in the interest of the general health, safety, and welfare of the community as determined by the enforcement officer.
- c. 'Enforcement Officer' shall mean the Community Preservation Manager or other employee or official appointed and designated by the City Manager to administer the provisions of this article.
- d. 'Owner' shall mean any person so designated on the last equalized assessment roll, as well as any person having or claiming to have any legal or equitable interest in privately owned real property.

SEC. 3-11.03 REGULATION OF SALES AND PURCHASES OF AEROSOL CONTAINERS OF PAINT AND WIDE-TIPPED MARKERS.

- a. It is unlawful for any person, firm, business, or corporation, except a parent or legal guardian, or a teacher during a supervised activity, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any aerosol container of paint that is capable of defacing property. Before selling any aerosol container of paint, a retailer must first obtain bona fide evidence of majority and identity. As used herein, the phrase "bona fide evidence of majority and identity" shall mean any document evidencing the age and identity of any individual which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the federal selective service act, or an identification card issued to a member of the armed forces.
- b. It is unlawful for any person under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property.
- c. Every person who owns, conducts, operates, or manages a retail commercial establishment selling pressurized paint cans of any size or weight, or any marker with a marking tip one-half inch or more at its largest dimension that is capable of defacing property with permanent, indelible, or waterproof ink, paint, or other liquid, shall store or cause such pressurized paint cans or markers to be stored in an area continuously observable by employees of the retail establishment during the regular course of business.

In the event a retail commercial establishment is unable to store such pressurized paint cans or markers in an area as described in this article, as an alternative, pressurized paint cans and markers shall be stored in an area viewable by but not accessible to the public in the regular course of business without employee assistance, pending the lawful sale or disposition of the pressurized paint cans or markers.

- d. Every retailer or other business establishment selling or offering for sale in this City aerosol containers of paint and/or wide tipped markers capable of defacing property shall post in a conspicuous place a sign in letters at least three-eighths of an inch high stating: 'Any person who maliciously defaces real or personal property with paint or permanent marker ink is guilty of vandalism which is punishable by a fine, imprisonment, or both.'

SEC. 3-11.04 PROHIBITION. It shall be unlawful for the Owner of any real property within the City bearing graffiti to allow the graffiti to remain on the property.

SEC. 3-11.05 NOTICE OF GRAFFITI ABATEMENT ACTION. Whenever the Enforcement Officer determines that graffiti exists in violation of section 3-11.04, and he or she is unable or unsuccessful in working with the Owner to remove or cover the graffiti, the Enforcement Officer may initiate a Graffiti Abatement Action by causing a Graffiti Abatement Notice to be served upon the Owner notifying the Owner of the violation of this ordinance and directing the Owner to abate the violation within 10 days from the date of notice or appear before the Enforcement Officer to show cause why the violation should not be abated by the City at the Owner's expense.

The notice shall be substantially in the following form:

NOTICE TO REMOVE GRAFFITI

(NAME AND ADDRESS OF PERSON NOTIFIED)

As owner, agent, lessee, or other person occupying or having charge or control of the building, lot, or premises at _____, you are hereby notified that the undersigned has determined that graffiti exists upon the above described premises in violation of Hayward Municipal Code section 3-11.04.

You are hereby notified that by _____, you must abate the above condition to the satisfaction of the undersigned, or request an administrative hearing to show cause, if any you have, as to why the condition should not be abated by the City and the expenses thereof charged to your property and if not paid thereafter, made a lien upon the real property described above. You may request an administrative hearing by calling the undersigned at _____. Abatement is to be accomplished in the following manner:

Dated: _____

By _____

SEC. 3-11.06 MANNER OF GIVING ABATEMENT NOTICE. A copy of the notice provided for in section 3-11.05 shall be sent to the Owner and may be sent to any other responsible person. The notice shall be sent by regular, first class mail, postage prepaid, and addressed as follows:

To the Owner: As the Owner's name and address appears on the last equalized assessment roll of the County of Alameda or as known to the Enforcement Officer.

To Any Other Responsible Person: As the responsible person's name and address are known to the Enforcement Officer or the person authorized by him or her to give notice.

Service shall be deemed complete at the time notice is deposited in the mail. The failure of any Owner or any other responsible person to receive notice shall not affect the validity of any proceedings taken hereunder.

SEC. 3-11.07 ADMINISTRATIVE HEARING. At the time fixed for the administrative hearing, if one is requested, the hearing officer shall consider all relevant evidence, objections, or protests offered on behalf of the Owner or responsible person which tend to show why the condition should not be abated and the expense thereof charged to the

Owner or responsible person as a civil debt and if not paid thereafter made a lien upon the premises. The Enforcement Officer may also consider rebuttal evidence offered by the City. The hearing may be continued from time to time.

If at the conclusion of the hearing the Enforcement Officer is satisfied that the condition exists and concludes that it should be abated, he or she shall so advise the persons attending the hearing, either orally or in writing.

SEC. 3-11.08 ABATEMENT BY CITY. If the nuisance is not abated as ordered within the abatement period, the Enforcement Officer shall cause it to be abated by City employees or private contractors as the Enforcement Officer may authorize to enter upon the premises. The cost, including administrative expenses, of abating the nuisance shall be billed to the Owner and shall become due and payable 30 days thereafter. The term 'administrative expense' shall include, but not be limited to the following: personnel costs, both direct and indirect; costs incurred in

documenting the nuisance; the actual expenses and costs of the City in the preparation and dissemination of notices, specifications, and contracts, and in inspecting the work, and the costs of printing and mailing the notices required hereunder.

SEC. 3-11.09 ACCOUNT AND REPORT OF COSTS. The Enforcement Officer shall keep an account of the cost of abating the nuisance and include that account in an annual report and assessment list to the City Council, which shall be filed with the City Clerk. The assessment list shall refer to each separate lot or parcel of land by a description that is sufficient to identify the lot or parcel together with the expense proposed to be assessed against each separate lot or parcel of land.

SEC. 3-11.10 NOTICE OF REPORT. The City Clerk shall post a copy of the report and assessment list on the bulletin board designated for the posting of agendas for City Council meetings together with a notice of filing thereof and of the time and place it will be submitted to the City Council for hearing and confirmation, notifying property owners that they may appear at such time and place and object to any matter contained therein. A like notice shall also be published twice in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least 10 days before the time the report is considered by the City Council.

SEC. 3-11.11 CONFIRMATION HEARING. At the time and place fixed for receiving and considering the annual report, the City Council shall hear the same together with any objections that may be raised by any person liable to be assessed for the work of abating the nuisance; the Enforcement Officer shall attend the meeting with his or her record thereof, and upon the hearing, the Council may make the modifications in the proposed assessments as it may deem necessary, after which the report and assessment list shall be confirmed by resolution.

The amount of the cost of abating the nuisance, including administrative expenses, shall constitute special assessments against the respective lots or parcels of land and after being confirmed shall constitute a lien on the property for the amount of the assessments until paid.

SEC. 3-11.12 COLLECTION ON TAX ROLL. After confirmation of the report, a copy shall be given to the City Director of Finance who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid assessments shall have been sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reports shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to such special assessment and the lien of the assessment shall have priority of the taxes with which it is collected.

SEC. 3-11.13 VIOLATIONS. Violation of any of the provisions of this article by any person or entity shall constitute an infraction. Such person or entity shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation is committed, continued, or takes place.

SEC. 3-11.14 STAY OF PROCEEDINGS DURING CRIMINAL PROSECUTION. In any case in which a criminal prosecution is pending or is about to be instituted for violation of Penal Code sections 594 and 640.6, or of any other law that authorizes a court to sentence a criminal defendant or ward of the court to remove graffiti placed on property by that person, the Enforcement Officer may suspend abatement actions under this article. In such a case, the abatement action shall be suspended only in connection with any property upon which the defendant or ward is charged with placing graffiti, and only until such time as he or she is sentenced. This provision shall not

prohibit a property owner from removing graffiti from his or her own property during such time as the criminal proceeding is pending.

SEC. 3-11.15 PROCEDURE NOT EXCLUSIVE. The procedures provided in the provisions of this article shall be cumulative and in addition to any other procedures provided in ordinances of this City or by state law for the prevention and abatement of any of the conditions described herein and abatement hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such condition.

SEC. 3-11.16 LIABILITY FOR DAMAGES. Pursuant to section 1714.1(b) of the California Civil Code, any parent or legal guardian whose minor child commits any act of willful misconduct which results in the defacement of property of another with paint or other substance shall be personally liable for any and all costs to any person or business incurred in connection with the removal of graffiti caused by the minor, and for all City costs, including attorneys fees and court costs incurred in any civil action caused by the misconduct. The parent or legal guardian shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, not to exceed \$10,000 for each such act of the minor.